IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF IDAHO

IN RE	)	
	)	**Case No. 99-41389**
RODNEY S. RANSOM,	)	
	)	
Debtor.	)	
_____	)	
	)	
MAX S. RANSOM,	)	**Case No. 99-41388**
	)	
Debtor.	)	**MEMORANDUM OF DECISION**
_____	)	

Brent T. Robinson, LING, NIELSEN & ROBINSON, Rupert, Idaho, for Debtors.

Tim P. Fearnside, HOWARD ELLSWORTH IPSEN & PERRY, Boise, Idaho, for First Security Bank.

L. D. Fitzgerald, Pocatello, Idaho, Trustee.

HON. JIM D. PAPPAS, CHIEF U.S. BANKRUPTCY JUDGE.

Background

Creditor First Security Bank, N.A. ("First Security") filed a Motion to Reopen Case in each of the Chapter 7 bankruptcy cases of Debtors Max Ransom (Case No. 99-41388) and Rodney Ransom (Case No. 99-41389) (the "Debtors"). Debtors object to the motions. The parties acknowledge, and the Court concurs, that the underlying facts and issues raised by each of First

Security's motions are identical. Therefore, the Court conducted a combined hearing on the motions on March 8, 2000. After consideration of the record and arguments by the parties, this Memorandum constitutes the Court's findings of fact and conclusions of law as to both motions. Fed. R. Bankr. Proc. 7052.

Facts

Debtors, who are brothers, formerly did business as a partnership known as Ransom Angus Ranch ("the partnership"). On May 8, 1997, the partnership filed for relief under Chapter 12 of the Bankruptcy Code. First Security filed a proof of claim in the case in the amount of $207,519.46, secured by all the partnership's livestock, inventory, crops, and equipment. The individual Debtors had guaranteed First Security's loan to the partnership. An amended Chapter 12 plan proposed by the partnership to pay its creditors, including First Security, was confirmed by the Court on January 12, 1998. However, the partnership was unable to make the payments promised in the plan, and on July 12, 1999, the Chapter 12 case was dismissed.

On the same day, Debtors executed a written Dissolution Agreement purporting to dissolve the partnership and conveying its assets to the individual partners, the Debtors. In connection with the Dissolution Agreement,

the partnership executed quitclaim deeds which effectively divided approximately 320 acres of real property owned by the partnership into two parcels of 160 acres, each parcel containing a residence, with one parcel conveyed to each of the Debtors. The partnership also executed bills of sale conveying approximately one-half of the partnership's personal property to each of the Debtors.

On August 18, 1999, Debtors each filed individual Chapter 7 bankruptcy petitions; Debtors filed their schedules and statements of affairs on September 15, 1999. They each claimed a homestead exemption pursuant to Idaho Code §§ 55-1001 *et seq.* as to their respective residences and parcels of real property . Debtors each received a discharge on November 24, 1999. Rodney Ransom's bankruptcy case was closed on November 24, 1999. Max Ransom's case was closed on December 6, 1999.

Citing Debtors' actions in causing the dissolution of the partnership and conveyance of its real and personal property to the individuals, First Security has moved to reopen each individual bankruptcy case to prosecute an adversary proceeding seeking to revoke the Debtors' discharges for fraud as authorized by Section 727(d)(1) of the Bankruptcy Code.[1] The motions, made

[1] Section 727(d) provides as follows:

pursuant to Section 350(b) of the Bankruptcy Code, were filed on February 14, 2000. On the same date, First Security filed an adversary complaint against each Debtor.[2] First Security took this approach because it was uncertain whether a reopening of the bankruptcy cases was necessary to confer jurisdiction upon the Court to revoke the discharges.

Debtors object to the reopening of their bankruptcy cases, asserting First Security lacks any valid basis for seeking to revoke their discharges pursuant to Section 727(d)(1), and therefore, no cause exists to reopen.

> On request of the trustee, a creditor, or the United States trustee, and after notice and a hearing, the court shall revoke a discharge granted under subsection (a) of this section if –
>
> (1) such discharge was obtained through the fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge; . . . .

A revocation proceeding based upon Section 727(d)(1) must be brought within one year after the discharge is entered. 11 U.S.C. 727(e)(1). First Security's motions are well within the one year time limit.

[2] In addition to revocation of discharge, First Security requests that the Debtors' real property be placed in a constructive trust. It also seeks money damages, permission to file lis pendens against the real property pending the outcome of the adversary proceeding, permission to execute upon the real property, and attorneys fees and costs. In the meantime, however, First Security has already recorded a lis pendens as to each of the parcels of real property, which were then filed in the bankruptcy case files. Technically, the Court doubts the lis pendens should have been filed in the case files since the cases are closed.

Discussion

A bankruptcy case may be reopened, pursuant to Section 350(b), "to administer assets, to accord relief to the debtor, or for other cause." 11 U.S.C. § 350(b); *see also,* Fed. R. Bankr. Proc. 5010. The decision whether to reopen a bankruptcy case is left to the discretion of the bankruptcy court. *Cisneros v. U.S. (In re Cisneros)*, 994 F.2d 1462, 1465 (9th Cir. 1993). The burden of establishing "cause" rests with the moving party. *In re Winburn*, 196 B.R. 894, 897 (Bankr. N.D. Fla. 1996); *Nissan Motor Acceptance Corp. v. Daniels (In re Daniels)*, 163 B.R. 893, 895 (Bankr. S.D. Ga. 1994); *In re Rundle*, 1991 WL 335833, *1 (Bankr. N.D. Ill. 1991).

Both parties have extensively argued whether Debtors' discharge should be revoked in connection with whether the bankruptcy cases should be reopened, the relief requested in First Security's motions. Some courts have indeed combined a discussion of the issues.[3] A recent decision of the Ninth Circuit Bankruptcy Appellate Panel instructs otherwise. *Menk v. Lapaglia (In re Menk),* 241 B.R. 896 (9th Cir. B.A.P. 1999). In *Menk,* where the issue concerned a request to reopen a bankruptcy case so the moving creditor could obtain a

[3] *See, e.g., Leach v. Buckingham (In re Leach)*, 194 B.R. 812 (E.D. Mich. 1996)*; In re Cloninger*, 209 B.R. 125, 126 (Bankr. E.D. Ark. 1997); *In re Ellis*, 112 B.R. 182, 183 (Bankr. S.D. Tex. 1989); *McQueary v. Cary (In re McQueary)*, 43 B.R. 948, 949 (Bankr. W.D. Ky. 1984).

determination as to dischargeability of the creditor's claim under Section 523(a), the Panel stated:

> [T]he motion to reopen legitimately presents only a narrow range of issues: whether further administration [of the bankruptcy case] appears to be warranted; whether a trustee should be appointed; and whether the circumstances of reopening necessitate payment of another filing fee. Extraneous issues should be excluded.

Id. at 916-17. Heeding this admonition, and because the "range of issues" is considerably narrower than those addressed by the parties, this Court's sole task is to determine whether cause exists to reopen Debtors' bankruptcy cases, without regard to the merits of the parties' positions regarding the revocation of Debtors' discharges.

Whether the Court *may* reopen a bankruptcy case, however, is a different question than whether the Court *must* reopen a case as a jurisdictional prerequisite to its ability to entertain an action pursuant to Section 727(d). Does the Court's subject-matter jurisdiction to revoke a Chapter 7 discharge depend upon reopening the bankruptcy case?

A bankruptcy court's subject-matter jurisdiction derives from Title 28 of the United States Code. Section 1334(a) grants the district courts original and exclusive jurisdiction over "all cases under title 11", while Section 1334(b)

grants original but not exclusive jurisdiction of "all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(a), (b). Bankruptcy courts in general, and the Bankruptcy Court in this District in particular, assume jurisdiction over cases by reference from the district courts. 28 U.S.C. § 157(a); Amended General Order No. 38. Once a bankruptcy case has been referred, the bankruptcy court has "arising under" jurisdiction for "those proceedings that involve a cause of action created or determined by a statutory provision of title 11." *Maitland v. Mitchell (In re Harris Pine Mills)*, 44 F.3d 1431, 1435 (9th Cir.), cert. denied, 515 U.S. 1131 (1995). Because revocation of a Chapter 7 bankruptcy discharge is a remedy created solely by Section 727(d) of the Bankruptcy Code, an action requesting such relief falls squarely within a bankruptcy court' s "arising under" jurisdiction. Once the Debtors' bankruptcy cases were filed, by operation of the statute and General Order, this Court acquired subject-matter jurisdiction over any action requesting the revocation of the Debtors' discharges.

The BAP's decision in *Menk* discusses in detail the ramifications of reopening a case on the bankruptcy court's jurisdiction; it is helpful here. In *Menk,* the bankruptcy court reopened a bankruptcy case on request of a creditor, and then determined the creditor's claim was excepted from the

debtor's discharge under Section 523(a). Interestingly, the debtor did not appeal the bankruptcy court's decision finding the creditor's claim nondischargeable. Rather, the debtor appealed the lower court's decision to reopen the bankruptcy case. Debtor's mistaken belief was that if the reopening was overturned, the bankruptcy court would have had no jurisdiction to render a decision in the dischargeability proceeding, thereby rendering it void.

The BAP makes clear that the bankruptcy court's jurisdiction over a civil proceeding is not dependent upon the existence of an open bankruptcy case. "The important point about § 1334 is that there is no explicit requirement that a 'case' be open under § 1334(a) for a court to act in a 'civil proceeding' under § 1334(b)." *Menk*, 241 B.R. at 904. The Panel explains:

> We have repeatedly held that the reopening of a closed bankruptcy case is a ministerial act that functions primarily to enable the file to be managed by the clerk as an active matter and that, by itself, lacks independent legal significance and determines nothing with respect to the merits of the case.

Id. at 913, citing *DeVore v. Marshack (In re DeVore)*, 223 B.R. 193, 198 (9th Cir. B.A.P. 1998); *Abbott v. Daff (In re Abbott)*, 183 B.R. 198, 200 (9th Cir. B.A.P. 1995); *U.S. v. Germaine (In re Germaine)*, 152 B.R. 619, 624 (9th Cir. B.A.P. 1993). Other courts have held that the closing of a bankruptcy case does not affect the court's jurisdiction to determine matters relevant to that case. *See*

e.g., Koehler v. Grant, 213 B.R. 567, 569-70 (8th Cir. B.A.P. 1997) (bankruptcy court had jurisdiction to enter contempt order even after case was closed); *Aiello v. Providian Financial Corp. (In re Aiello)*, 231 B.R. 693, 706-707 (Bankr. N.D. Ill. 1999) (court had jurisdiction to hear adversary proceeding brought on behalf of class of debtors even though some of the debtors' cases had already been closed); *In re Taylor*, 216 B.R. 515, 521 (Bankr. E.D. Pa.1998) (court had jurisdiction to order distribution of unclaimed funds remaining after conclusion of Chapter 13 case without reopening it).

The BAP considered a number of factors important when determining whether the bankruptcy court can exercise its jurisdiction under 28 U.S.C. § 1334(b) in the absence of an open bankruptcy case. These factors include the nature of the civil proceeding; the essential parties; and the impact of the outcome of that proceeding on the estate. *Menk,* 241 B.R. at 904. In *Menk,* the Panel determined that whether the particular creditor's claim against the debtor was excepted from discharge under Section 523(a) was not such a proceeding requiring that the debtor's bankruptcy case be reopened.

By contrast here, a discharge *revocation* proceeding, if successful, could significantly affect the rights of all creditors holding otherwise dischargeable claims against Debtors. Additionally, while the Chapter 7 trustee

is not a necessary party to the dischargeability action, *Menk,* 241 B.R. at 913, a Chapter 7 trustee may have an affirmative duty to participate on behalf of the bankruptcy estate in discharge revocation proceedings, or otherwise play an active role in resolving the controversy. 11 U.S. C. § 704(4); (6); (7) (trustee shall investigate debtor's financial affairs; if advisable, oppose the discharge of a debtor; and furnish information concerning the estate and its administration requested by a party in interest); 11 U.S.C. § 727(c)(2) (court may order trustee to examine acts of debtor to determine whether a ground exists for denial of discharge); Fed. R. Bankr. Proc. 7041 (complaint objecting to debtor's discharge shall not be dismissed without notice to the trustee).

In short, *Menk's* lesson is that while reopening a bankruptcy case may not be jurisdictionally required for the Court to grant First Security relief under Section 727(d), under proper facts, it is may represent the best procedural route to take in examining the creditor's allegations. Moreover, while 28 U.S.C. § 1334(b) authorizes the Court to act without a pending bankruptcy case, from an administrative perspective, the Court is unable to conceive of how discharges entered in Debtors' bankruptcy cases could be revoked without those bankruptcy cases being reopened.

Therefore, in the exercise of its discretion, while it is not mandated as a matter of jurisdiction to reopen the Debtors' bankruptcy cases, and without expressing any opinion regarding the merits of the creditor's Section 727(d) discharge revocation complaints, the Court concludes that First Security's desire and intention to pursue such adversary proceedings constitutes adequate cause to warrant reopening Debtors' bankruptcy cases.

Conclusion

For the reasons stated above, First Security's Motions to Reopen Case will be granted effective as of February 14, 2000. For the interests of all concerned, the U.S. Trustee will be instructed to appoint a Chapter 7 trustee. A separate order will be entered by the Court.

DATED This 30th day of March, 2000.

_____
JIM D. PAPPAS
CHIEF U.S. BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

I, the undersigned, hereby certify that I mailed a true copy of the document to which this certificate is attached, to the following named person(s) at the following address(es), on the date shown below:

Office of the U.S. Trustee
P. O. Box 110
Boise, Idaho 83701

Brent T. Robinson, Esq.
P. O. Box 396
Rupert, Idaho 83350

Tim Fearnside, Esq.
P. O. Box 637
Boise, Idaho 83701

L. D. Fitzgerald
P. O. Box 6199
Pocatello, Idaho 83205

CASE NO.: 99-41388
99-41389

CAMERON S. BURKE, CLERK
U.S. BANKRUPTCY COURT

DATED:

By_____
Deputy Clerk